

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-820

March 17, 2000

BANGOR HYDRO-ELECTRIC COMPANY  
Request for Approval of Sale of Generation  
Assets

ORDER APPROVING  
DIVESTITURE OF WATER  
STORAGE DAMS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## **I. SUMMARY**

We authorize Bangor Hydro-Electric Company (BHE) to divest its interests in five water storage dams by transfer or abandonment, as described in this Order. In order to permit BHE to accomplish the transfers and abandonments, we extend the March 1, 2000 deadline for divestiture of these generation-related assets.

## **II. BACKGROUND**

The Restructuring Act requires BHE to divest all generation assets and generation-related business activities with certain limited exceptions on or before March 1, 2000. 35-A M.R.S.A. § 3204(1). Section 3204(3) and Chapter 307 of our Rules permit BHE to apply for an extension to divest one or more generation assets or generation-related business activities after March 1, 2000. Extensions are permissible if the Commission finds that an extension would likely improve the sale value of the assets or would likely reduce the level of stranded costs.

Divestiture must occur according to a plan approved by the Commission. 35-A M.R.S.A. § 3204(1). BHE's divestiture plan was approved by the Commission on June 17, 1998 in Docket No. 98-114. In accord with that plan, BHE offered its generation assets for sale as part of a bid auction process.

BHE's generation-related assets include interests in five water storage dams. BHE holds a 60% interest in East Branch Improvement Company (EBI),<sup>1</sup> which owns the Lock, Telos and Matagamon dams and certain lands adjacent to those dams, as well as the rights to develop certain dam sites. BHE owns the Sebec and Sebois dams, as well as certain land adjacent to the dams. BHE's interests in the five water storage dams, as well as the adjacent land and the development rights, were included among the generation assets offered for sale.

As a result of the auction, BHE selected the bid from PP&L Global, Inc. (PPLG) as providing the most value. BHE's auction process and selection of PPLG were found reasonable and approved by the Commission on February 3, 1999 in this docket.

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<sup>1</sup> Great Northern Paper Company owns the remaining 40% interest in EBI.

PP&L's bid, however, did not include the five water storage dams, and associated land and development interests. BHE received no bids for the water storage dams on a stand-alone basis. In its testimony supporting approval of the sale to PP&LG, BHE witnesses stated that BHE would continue to attempt to transfer at least some of the water storage units to the State of Maine or other interested parties. If these attempts were not successful, the witnesses stated that BHE would explore the procedure for the abandonment of such facilities. Through discovery in this case, BHE witnesses explained that BHE planned to transfer without additional compensation or abandon these facilities because whatever little value they possessed was overwhelmed by the maintenance expenses and taxes incurred by BHE. Moreover, significant capital improvements were also necessary to comply with licensing or relicensing requirements.

On February 4, 2000, BHE filed a Motion for a Third Supplemental Order in this docket. BHE seeks an order, pursuant to 35-A M.R.S.A. § 3204, extending the March 1, 2000 deadline for divestiture of the water storage facilities, and authorizing and approving BHE and its affiliate, EBI, to transfer or abandon their right, title and interest in the five water storage dams. BHE's updated divestiture plan for the dams is as follows.

The Sebec dam is located at the foot of Sebec Lake in the Piscataquis River basin. The dam is used to maintain water levels at the lake for recreational purposes and to divert outflow to Swift River Hafslund LLC's (Swift River) hydro-electric power station. BHE states that the dam presently has no positive market value. The Sebec Dam is the subject of a lease between BHE and Sebec Hydro Company dated March 19, 1984 for a 40-year term. Under the terms of the lease, BHE receives a monthly lease payment equal to 5% of the lessee's gross generation revenues at prices up to and including 8¢ per kWh, plus 25% of the excess of gross revenues derived above the gross revenues derived at prices up to and including 8¢ per kWh. The lease revenue will be less than maintenance and other operating expenses associated with the Sebec dam.

BHE and Swift River have agreed that BHE will transfer the Sebec dam and certain land adjacent to the dam and assign the associated lease to Swift River. The transfer will release BHE from all obligations during the remaining 25 years of the lease (e.g. maintenance costs) and all obligations arising at the end of the lease (e.g. property taxes). Based upon the expected time frame necessary to execute the closing documents and complete the transfer of ownership of the Sebec dam, BHE requests an extension of the divestiture deadline to July 1, 2000.

The Lock and Telos dams are located on the Allagash Wilderness Waterway (AWW). Both dams are within a designated "restricted zone" in which development is prohibited. See 12 M.R.S.A. § 1876. The dams are currently used to maintain water levels for the AWW. In the past, the dams were used to augment generation of BHE's hydro-electric plants. PPLG, the owner of BHE's hydro-electric plants, has no interest in

obtaining the Lock or Telos dams. In BHE's view, the dams presently have no positive market value.

The State of Maine's Bureau of Parks and Lands within the Department of Conservation (the Bureau) is authorized to acquire any land improvements or other interests located within the AWW. 12 M.R.S.A. § 1877. EBI and the Bureau have agreed that EBI will transfer to the Bureau the Lock and Telos dams and certain land adjacent to the dams. The transfer also will include assignment of certain rights and privileges associated with the dams. As part of the transfer, the Bureau will release EBI from its dam maintenance responsibilities. BHE will directly benefit by the elimination of the costs, including property taxes, associated with these two dams. According to BHE, the proposed transfer of the Lock and Telos dams, adjacent lands and associated rights and interests, will mitigate BHE's stranded costs and is consistent with BHE's approved divestiture plan from Dockets 98-114 and 98-820. Based on the expected time frame necessary to prepare and complete the transfer of ownership of the Lock and Telos dams, BHE requests an extension of the divestiture deadline to July 1, 2000.

The Matagamon dam is located at the head of the east branch of the Penobscot River. The dam maintains water levels for recreation, fish and wildlife resources. In the past the dam has been used to facilitate generation at BHE's hydro-electric plants. As the new owner of the hydro-electric plants, PPLG, has no interest in obtaining the dam, BHE asserts that the dam currently has no positive market value. EBI plans to divest the dam, certain lands adjacent to the dam and certain rights and privileges associated with the dam through Maine's Dam Abandonment Act.

Sebois Dam is located at the foot of Sebois Lake in the Piscataquis River Basin. The dam maintains water levels for recreational purposes. According to BHE, the Dam has no positive market value. BHE plans to divest this dam and certain lands adjacent to the dam through Maine's Dam Abandonment Act. According to BHE, the abandonment procedure will result in either 1) transfer of the dam to another entity or 2) abandonment. Either result will release BHE from its dam maintenance responsibilities. BHE will directly benefit from the elimination of costs, including property taxes, which will reduce stranded costs and be consistent with BHE's divestiture plan.

BHE states that pursuant to statutory requirements, the abandonment process takes approximately one year to complete. Therefore, BHE seeks an extension to divest the Matagamon and Sebois Dams until April 1, 2001 in order to complete the abandonment procedure.

After the divestiture of the Lock, Telos and Matagamon dams, EBI's sole remaining material asset will be the rights to develop certain undeveloped dam sites. According to BHE, these development rights have no positive market value today due to environmental and zoning regulations. EBI will therefore not be in the position of either generating or facilitating the generation of electric power. Accordingly, BHE requests an exemption from any requirement that EBI divest its remaining development rights or any requirement that BHE divest its interest in EBI.

BHE served its motion on all parties to this docket. No comments, protests or objections have been filed with the Commission.

### **III. DECISION**

We agree with BHE that its proposed transfer of two water storage dams to the State of Maine and one to Swift River, and the abandonment of the other two dams, represent the most reasonable means for BHE to reduce its potential stranded costs. BHE included the water storage dams within its divestiture auction. The only value attributed by any bidder to these dams was in conjunction with owning the hydro-electric facilities, also offered as part of the divestiture auction. PPLG, the entity that offered the highest value for the hydro-electric assets, excluded the water storage dams from its bid on the hydro-electric assets. It is reasonable for BHE to conclude that the water storage dams no longer possess any market value. Therefore, a reasonable stranded cost mitigation strategy is to eliminate the costs associated with the water storage dams. BHE's strategy is also consistent with its divestiture plan and execution of that plan through the sale of the hydro-electric facilities to PPLG. The extensions of the deadlines to divest so that BHE can accomplish the transfer or abandonment strategy are also reasonable.

The transfer of the Lock and Telos dams to the State of Maine will include assignment of certain rights and privileges associated with the dams. Various private and special laws, P. & S.L. 1846, ch. 386, (AN ACT to Incorporate the Telos Canal Company), P. & S.L. 1903, ch. 193, (AN ACT to Incorporate the East Branch Improvement Company), and P. & S.L. 1933, ch. 35, (AN ACT to Confer Additional Rights and Powers Upon East Branch Improvement Company), grant to EBI, among other things, the right to build, maintain and operate the Telos and Lock dams along with the right to hold and store water for power purposes. These rights facilitate the production of hydro-electric power.

Section 3204(8) of the Restructuring Act authorizes an electric utility to transfer generation asset-related rights, privileges and immunities created by private and special laws upon a written finding by the Commission that the applicable private and special laws grant rights, privileges or immunities that are either (1) generation assets required to be divested pursuant to restructuring, or (2) are necessary to the ownership or operation of generation assets. We find that the rights under the private and special laws described above are necessary to the operation of the Lock and Telos dams, and that these rights, privileges or immunities are generation assets required to be divested pursuant to restructuring or are necessary to the ownership or operation of generation assets.

Various other private and special laws, P. & S.L. 1846, ch. 388 (AN ACT to Incorporate the Grand Lake Dam Company), P. & S.L. 1852, ch. 650 (AN ACT to Incorporate the East Branch Dam Company), P. & S.L. 1903, ch. 193 (AN ACT to Incorporate the East Branch Improvement Company), P. & S.L. 1915, ch. 188 (AN ACT

to Confer Additional rights and Powers upon EBI), and P. & S.L. 1933, ch. 35 (AN ACT to Confer Additional Rights Upon EBI), grant EBI the right to maintain and operate the Matagamon dam along with the right to hold and store water for power purposes. These rights and privileges facilitate the production of hydro-electric power. These rights and privileges are necessary to the operation of the Matagamon dam and as such, the above mentioned private and special laws grant rights, privileges or immunities that are either generation assets required to be divested pursuant to restructuring or are necessary to the ownership or operation of generation assets.

As to Bangor Hydro's interest in EBI, we accept BHE's conclusion that upon the transfers and abandonments described above, EBI's remaining assets will constitute assets that are not generation assets and that are not necessary to the ownership or operation of generation assets. As such, BHE does not require any exemption from the requirement to divest generation assets to hold its interests in EBI. From BHE's description, however, we surmise that its interest in the EBI is no longer used and useful for the purposes of a now T&D utility. We request BHE to provide the Commission with a list of all non-generation-related assets that BHE considers not used and useful for T&D purposes (including EBI), the basis for such conclusions, and BHE's plans for such assets.

Presumably with this petition, BHE does not hold any interest in property that it considers to be generation-related, other than those assets which by this Order or earlier orders, the Commission has exempted or for which it has extended the divestiture requirement. We ask BHE to confirm that BHE possesses no other interests in assets that BHE considers to be generation-related other than those exempted or whose divestiture requirement deadlines have been extended. BHE should submit the list and confirmation described above by July 1, 2000.

Accordingly, we

#### ORDER

1. That the transfer and abandonment of generation assets described in this order by BHE are consistent with Bangor Hydro-Electric's divestiture plan approved in Docket 98-114 and as executed and further approved by the Commission in Docket 98-820;
2. That the transfer or abandonment of generation assets as described in this Order, by Bangor Hydro-Electric Company is authorized;
3. That Bangor Hydro-Electric Company is authorized to transfer generation-asset-related rights, privileges and immunities created by private and special laws because the Commission has found that the above-described private and special laws grant rights, privileges or immunities that are either generation assets required

to be divested or are necessary to the ownership or operation of generation assets, as described in the body of this Order; and

4. That Bangor Hydro-Electric Company shall comply with the other requirements as described in the body of this Order.

Dated at Augusta, Maine, this 17th day of March, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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